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February 6, 2015

Mr. Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1009 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570

Regarding:    Sub-Acute Rehabilitation Center at Kearny, LLC

Case No.:    22-CA-093626

Dear Mr. Shinnars:

Our firm represents Sub-Acute Rehabilitation Center at Kearny, LLC (“Belgrove”). This letter constitutes Belgrove’s opposition to General Counsel’s motion to file an amended complaint in this matter.

On November 25, 2014, the National Labor Relations Board (“Board”) issued a decision certifying the bargaining unit of all full-time, regular part-time, and per diem licensed practical nurses. The Board gave General Counsel the opportunity to issue an amended complaint based upon the new certification. General Counsel was allowed to amend the complaint by December 5, 2014. The Board further indicated that the parties had until January 9, 2015 to show cause why General Counsel’s motion for summary judgment should not be granted.

General Counsel did not move to amend the complaint. In fact, General Counsel concedes in General Counsel’s motion for permission to amend the complaint that there were no facts to support an amendment on December 5, 2014. Based upon General Counsel’s concession that there were no facts in this case to support a refusal to bargain charge in the relevant period required by the Board, the case should be dismissed by the Board.

General Counsel’s statement in its motion to amend that no one is prejudiced is simply not true. The Company invested time, effort and money in drafting a response to the Board’s order that it show cause why General Counsel’s motion should not be granted. Belgrove was the only party to submit papers to the Board.

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It is simply unfair to allow General Counsel to amend its complaint almost two months after the deadline to amend. Based upon the allegations in the proposed Amended Complaint, the union in this case waited almost two months after the certification to send a letter to Belgrove to bargain.

Further, General Counsel cites Section 102.17 of the Board's Rules and Regulations in support of General Counsel's claim that it should be allowed to amend the complaint. Section 102.17 allows for an amendment when the case is before the Board only when the case has been transferred, pursuant to Section 104.45, after a hearing before an administrative law judge, a circumstance that has not occurred in this case. Thus, Section 102.17 does not provide a basis to allow an amendment.

If General Counsel wants to proceed on the claim that Belgrove has not bargained, there should be a new charge filed by the union based upon the certification of November 25th, an investigation, and then a complaint. That is procedure that has been followed for dozens of years after a new certification is issued. There can be no prejudice to the General Counsel or the union in following this procedure.

In sum, General Counsel's motion to amend should be denied.

Very truly yours,  
/s/ Stuart Weinberger  
Stuart Weinberger

cc: Arnold Cohen, Esq.  
Julie Kaufman, Esq.

## AFFIRMATION OF SERVICE

STUART WEINBERGER, declares pursuant to 28 U.S.C. Section 1746, as follows:

I am not a party to this action. On February 6, 2015 I served the opposition to General Counsel's motion by e-mailing the opposition to:

- (1) Arnold Cohen, Esq. of Oxfeld Cohen, P.C., 60 Park Place, 6<sup>th</sup> Floor, Newark, New Jersey 07102 at the e-mail address of [asc@oxfeldcohen.com](mailto:asc@oxfeldcohen.com), which is the address designated by him.
- (2) Julie Kaufman, Region 22, 20 Washington Place, 5<sup>th</sup> Floor, Newark, NJ 07102 at the e-mail address of [julie.kaufman@nrlrb.gov](mailto:julie.kaufman@nrlrb.gov), which is the address designated by her.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on the 6th day of February, 2015.

/s/ Stuart Weinberger  
Stuart Weinberger